

REMARKS

In the Office Action dated May 18, 2005, the Examiner asserted that the claims are directed to “the following patently distinct species:”

Species A: Purge gas supplied directly to the pump (fig. 1 and 2).

Species B: Purge gas supplied to the vacuum chamber (fig. 3).

Species C: Backing pump [before] the separator (fig. 2).

Species D: Backing pump after the separator (fig. 1).

The Examiner further asserted that claims 1, 12-19 and 25-33 are generic. Applicant traverses the Examiner’s restriction requirement and seeks favorable reconsideration and withdrawal of the restriction requirement in view of the following remarks.

Applicant respectfully submits that claim 7 is also a generic claim. Dependent claim 7 claims a “first gas recirculating means for recirculating first gas from the separating means to the vacuum chamber” (emphasis added). Claim 7, which depends from generic claim 1, reads on each of Figures 1-3 and thus, claim 7 is generic to Species A-D as defined by the Examiner.

For the purposes of the restriction requirement, Applicant elects Species A and Species C. *Office Action*, ¶ 1. Thus, Applicant elects generic claims 1, 7, 12-19 and 25-33 and species claims 2, 4, 8-11, and 21-22. Applicant has withdrawn claims 3, 5-6, 20 and 23-24 with traverse.

Applicant respectfully submits that species A-D are “related inventions.” *See M.P.E.P.*, § 808.02. The Specification discloses that the embodiment shown in Figure 2 “is similar to the first embodiment [shown in Figure 1], except that the backing pump 132 and purifier 134 are arranged downstream of the turbo-molecular pump.” *Detailed Description*, p. 12 lines 7-10. The Specification further discloses that the embodiment shown in Figure 3, “is also similar to the first embodiment [shown in Figure 1], except that the conduit 114 supplies the purge gas to the vacuum chamber 102 rather than directly to the pump.” *Detailed Description*, p. 12 lines 16-20. Where, as disclosed in the application, the inventions are related, and where the related inventions are distinct, “the examiner, in order to establish reasons for insisting upon restriction, must show...one of the following: 1) Separate classification...; 2) Separate status in the art when they are classifiable together...; or 3) A different field of search.” *M.P.E.P.* § 808.02 (emphasis added). Where none of these three items can be shown, then “no reasons exist for dividing

among related inventions.” *Id.* Accordingly, if none of these items can be shown Applicant respectfully requests withdrawal of the restriction requirement.

In addition, Applicant respectfully submits that the Examiner has also not demonstrated that a “serious burden” would result in performing a search on the remaining six claims (i.e. claims 3, 5-6, 20 and 23-24) directed to Species B and D, which are related to the claims directed to Species A and C. “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to...distinct inventions.” *M.P.E.P.*, § 803 (emphasis added). Applicant respectfully submits that performing a search on claims 3, 5-6, 20 and 23-24, which are related to the claims directed to Species A and C, would not appear to impose a serious burden on the Examiner. Accordingly, Applicant requests withdrawal of the restriction requirement.

For the reasons set forth above, Applicant respectfully requests withdrawal of the restriction requirement. However, if the Examiner maintains the restriction, Applicant reserves the right to petition the restriction or alternatively to file continuing applications directed to claims 3, 5-6, 20 and 23-24.

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